

ENCLOSURE 7

**Comments from designated party Pacific Built, Inc.,
dated July 19, 2006 on the July 11, 2006 revised
proposed Administrative Civil Liability Order**

10-0089

BRINER LAW OFFICES
P. O. Box 1880
TAHOE CITY, CALIFORNIA 96145

drew@infostations
.com

(530) 583-8961
Fax (530) 583-0156

July 19, 2006

Harold J. Singer
Robert S. Dodds
Lahontan RWQCB
2501 Lake Tahoe Blvd
South Lake Tahoe, CA 96150

**Re: In the Matter of C. Geoffrey and Kristine Davis, et al.
Lahontan Complaint No. R6T-2005-0029**

Dear Mr. Singer and Dodds:

Enclosed are two originals and 12 copies of Pacific Built, Inc.'s comments to the proposed July 11, 2006 Lahontan order.

Very truly yours,

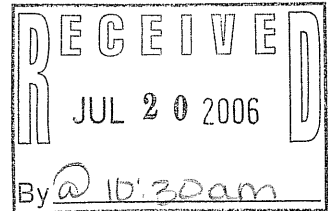


Drew Briner

/mb
encl.

cc (w/encl.): David P. Coupe
Steven H. Blum
Mark D. Hudak
James R. Donahue
Bruce L. Shaffer
Paul C. Clauss

10-0090



1 Drew Briner (SBN 142858)
2 Briner Law Offices
3 P. O. Box 1880
4 395 North Lake Blvd.
5 Tahoe City, CA 96145
6 Telephone: (530) 583-8961

7 Bruce L. Shaffer (SBN 62730)
8 Lewis Brisbois Bisgaard & Smith LLP
9 2500 Venture Oaks Way, Suite 200
10 Sacramento, CA 95833
11 Telephone: (916) 564-5400

12 Attorneys for Pacific Built, Inc.

13 STATE OF CALIFORNIA
14 REGIONAL WATER QUALITY CONTROL BOARD
15 LAHONTAN REGION

16 -ooOoo-

17 In the matter of C. Geoffrey and
18 Kristine Davis, Hans and Margaret
19 Coffeng, and Pacific Built, Inc.:
20 Violation of Waste Discharge
21 Prohibitions prescribed in the
22 *Water Quality Control Plan for*
23 *the Lahontan Region, for the*
24 *Unauthorized Discharge of*
25 *Untreated Wastewater to Lake*
26 *Tahoe, at 7770 and 7780 North*
27 *Lake Boulevard, Kings Beach,*
28 *Placer County Assessor's Parcel*
Numbers 117-180-017 and -018 WDID
No. 6A310408003.

COMPLAINT NO.
R6T-2005-0029
FOR ADMINISTRATIVE CIVIL
LIABILITY

COMMENTS BY PACIFIC BUILT,
INC. TO PROPOSED JULY 11,
2006 LAHONTAN ORDER

29 _____/
30 Pacific Built, Inc. submits these comments to the proposed
31 Lahontan July 11, 2006 order.

32 INTRODUCTION

33 The July 11, 2006 order, while moving in the right direction,
34 still fails to address legal issues and to acknowledge significant
35 facts the Board should consider in their decision. Pacific Built's
36 comments dated June 30, 2006 are incorporated herein by reference.

1 The following comments only address the changes proposed in the July
2 11, 2006 order.

3 **SECTION 13327 FACTORS**

4 6.a. Nature, Circumstances, Extent, and Gravity

5 ii. NTPUD Signs: The July 11, 2006 order does not acknowledge
6 evidence concerning the location of NTPUD signs signaling the
7 presence of the force main on Highway 28, and the lack of such signs
8 on the Beach. The July 11, 2006 order states in the 2nd paragraph on
9 page 5 that "...the exact locations and spacing of the signs and
10 their relationship to the Coffeng and Davis properties were not
11 established." Therefore, the Water Board does not believe that the
12 signs provide a rationale for believing that a force main or other
13 utility was not located within the project area. This is a confusing
14 and inaccurate statement given that there was evidence and testimony
15 addressing these issues. Specifically, the declarations of Tom Ragan
16 and Luke Ragan both state:

17 "The force main line was marked with signs on metal posts
18 along North Lake Boulevard, but there is no indication that
19 the line turned toward the beach. Attached as Exhibit 5 to
20 Pacific Built's Response in this action is a photograph of
one of the metal signs. No signs were present on the beach
nor were there any other indicators of the presence of an
easement or sewer force main."

21 Additionally, the transcript of the May 11, 2006 hearing at page
22 59: line 1 to page 60: Line 19 from Mark Hudak's presentation states:

23 "Equally important there is signage along North Lake Tahoe
24 Boulevard that tells us that the sewer force main is buried
25 beneath Route 28, and not under the beach. And that's very
significant."

26 Here is a photograph taken right up the street from where we
27 are today. In the background you can see the Davis home; in
28 front of it the Coffeng home. Less than 200 feet from this
sign, which reads: Warning, force main sewer underground.
Before digging in this area, please call NTPUD

Now, any reasonable person seeing that sign, standing

1 and looking straight ahead toward the Davis and Coffeng home,
2 would have to conclude that that's where the force main is
3 and that's where it's heading. In point of fact, it
4 apparently takes a right-hand turn shortly before that sign.

5 Here is Secline Avenue, kind of down at the other end of the
6 beach. And you can see, no signage here. We looked
7 carefully, no signage here. Nothing to indicate that there
8 is a sewer force main running down along here.

9 Here is another significant photograph. And if you remember
10 the one that I showed you on North Tahoe Boulevard, it is
11 literally right up here -- I'm going to have to get the court
12 reporter there -- the sign is on a little stub of Beach
13 Avenue, which comes down to about here; cuts off, it's
14 barricaded off; and then down to the beach. There's no
15 signage at the end of Beach Avenue where I assume the force
16 main has made its right turn.the order

17 Lastly, the testimony of Luke Ragan addresses this issue.
18 (Transcript of the May 11, 2006 hearing at page 229: line 25 to page
19 230: Line 12).

20 " Mr. Ragan, you're familiar with the photo of the North
21 Tahoe PUD sign that marks the force main up on Highway 28?

22 Yes, I am.

23 And that sign does state that in the event you're going to dig in
24 that area you would call the North Tahoe PUD?

25 Absolutely.

26 Question. If that sign was down on the beach in the area of your
27 work would you have called the North Tahoe PUD as directed by that
28 sign?

29 Absolutely."

30 Therefore there is clearly ample evidence showing the location
31 and non-location of the NTPUD signs and their relationship to the
32 project area that provide a rationale for believing that a force main
33 was not located in the project area.

34 Mr. Ragan Knowledge of Gravity Sewer: The July 11, 2006 order
35 states that Pacific Built should have called USA based on case
36 evidence of experience with sewers in the shorezone. The July 11,

1 2006 order fails to acknowledge that the case evidence only shows
2 that Mr. Ragan had experience with gravity sewers in Dollar Point,
3 and that gravity sewers are exempt from USA. Government Code section
4 4216 (j).

5 Therefore it is illogical to argue knowledge of gravity sewers is
6 a basis for calling USA on the Davis/Coffeng project, especially as
7 force mains are hidden, and there was no indication of the existence
8 of the force main from the title reports, from project plans, from
9 extensive professional review, from signage, or from any of the
10 public and private documents that were a part of this project.

11 6.d.&e. Ability to Pay/Ability to Stay in Business

12 Why Lahontan Staff wants this Board to ignore Pacific Built tax
13 returns, financial documents, and an SBA loan denial letter provided
14 under penalty of perjury and accepted into evidence baffles me. The
15 only reason I can think of is that the undisputed facts that Pacific
16 Built lost money the last three years, that it can't borrow money,
17 that it doesn't have the ability to pay a civil liability from this
18 Board, and that it would not have the ability to stay in business in
19 the face of a civil liability from this Board is devastating to
20 Lahontan Staff's case.

21 This Water Code section 13227 factor alone warrants that a
22 significant civil liability not be imposed. Lahontan Staff has never
23 requested any specific financial documents at any time. Pacific
24 Built will gladly provide any information or documentation concerning
25 Pacific Built's ability to pay and stay in business that this Board
26 desires to address this factor.

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10-0094

1 6.h. Degree of Culpability

2 The July 11, 2006 order in the 2nd paragraph on page 10 states
3 that Pacific Built should have called USA based on 30 years of
4 experience within Lake Tahoe, and that this experience includes work
5 on laterals and a gravity sewer in Dollar Point. Again, the July 11,
6 2006 order fails to acknowledge that the experience only shows that
7 Mr. Ragan had experience with gravity sewers in Dollar Point, and
8 that gravity sewers are exempt from USA. Government Code section
9 4216 (j).

10 Again, it is illogical to argue that experience with gravity
11 sewers is a basis for calling USA for the Davis/Coffeng project.
12 Moreover, Mr. Ragan's experience can be looked at another way. There
13 was no evidence that Mr. Ragan or Pacific Built has ever encountered
14 a force main in the shorezone of Lake Tahoe. If a respected marine
15 contractor with 30 years of experience has never encountered a force
16 main in the shorezone, and given all the other evidence of lack of
17 knowledge by owners, consultants, and surveyors, involved in the
18 Project (force mains are hidden, title reports, project plans,
19 extensive professional review, lack of signage, public and private
20 documents that were a part of this project) the logical conclusion is
21 that Pacific Built did not have a reasonable belief that a force main
22 existed on the Davis/Coffeng project.

23 CONCLUSION

24 Pacific Built respectfully requests that this Board take the
25 facts discussed above into account in rendering its decision in this
26 matter.

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10-0095

1 Dated: July 19, 2006

Respectfully submitted,

2 **BRINER LAW OFFICES**

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4 By: 
5 Drew Briner, Attorneys
6 for PACIFIC BUILT, INC.
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